

In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)	
)	Chapter 7 Case
PALMER JOHNSON)	
SAVANNAH, LLC)	Number <u>05-40055</u>
)	
<i>Debtor</i>)	

MEMORANDUM AND ORDER
ON MOTION TO PAY EMPLOYEE WAGES, VACATION TIME,
AND ACCRUED SICK LEAVE FROM ESTATE ASSETS

This case comes before the Court on Debtor's Motion to Pay Employee Wages, Vacation Time, and Accrued Sick Leave from Estate Assets ("Motion"). This Court has jurisdiction over this proceeding under 28 U.S.C. § 157.

FINDINGS OF FACT

The facts relevant to this motion are not in dispute. Debtor filed this Chapter 7 petition on January 6, 2005. On January 28, 2005, Debtor filed its Motion requesting the Court enter an order directing the Chapter 7 Trustee ("Trustee") to pay unpaid prepetition wages, vacation time, and accrued sick leave to seventeen employees in the total amount of \$22,725.98. Debtor contends that the Court has the authority to enter such an order pursuant to 11 U.S.C. §§ 105 and 507(a)(3)(A). This Court conducted a hearing on the Motion on February 28, 2005.

Although Trustee does not dispute the validity of the employees' claims, Trustee opposes Debtor's Motion to pay the claims immediately. Trustee argues that at this time the estate assets are insufficient to pay the unpaid wages, vacation time and sick leave as well effectively

administer the estate in order to maximize the benefits for all creditors. Trustee has hired attorneys to represent the estate in litigation pending in both the Superior Court of Chatham County, Georgia, and the United States District Court for the Southern District of Florida. This litigation may be of significant value to the estate. Furthermore, Trustee states that there are other matters that need to be investigated for which he may need to hire additional attorneys and accountants. In order to pursue these matters, Trustee needs to retain the estate assets to pay administrative expenses.

After the hearing, Debtor amended its Motion such that it is requesting immediate payment of only prepetition wages not including the vacation time and accrued sick leave. This amended Motion requests a total amount of \$13,770.08 to be distributed to nineteen employees for unpaid wages up to the date of the filing of the bankruptcy petition.

In his response to the amended Motion, Trustee continues his opposition. At this time, Trustee has only \$48,518.00 in total estate assets, and Debtor's requested \$13,770.08 constitutes approximately 28% of the available assets.

CONCLUSIONS OF LAW

In a Chapter 7 liquidation, property of the estate is to be distributed in the order directed by 11 U.S.C. § 726. Section 726 provides that the first claims to be paid are those listed in 11 U.S.C. § 507. Section 507 prioritizes claims and specifies the order in which claims should be paid. Section 507 provides in pertinent part:

(a) The following expenses and claims have priority in the following order:

(1) First, administrative expenses allowed under section 503(b) of this title, and any fees and charges assessed against the estate

under chapter 123 of title 28 . . .

(3) Third, allowed unsecured claims, but only to the extent of \$4,925 for each individual or corporation, as the case may be, earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for-

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual.

There is no dispute that the employee claims are third priority claims under Section 507(a)(3)(A) and will be paid immediately behind the administrative expenses of the estate. However, Debtor argues that there are no creditors with a higher priority than the employees and Trustee has sufficient assets to pay the prepetition wages; therefore, the employees should be paid immediately.

A court's authority to authorize early payment of prepetition claims has been the subject of much litigation in recent years; however, the issue most often arises in the context of a Chapter 11 reorganization. *See, e.g., In re Kmart Corp.*, 359 F.3d 866 (7th Cir. 2004); *In re Tropical Sportswear, Int'l Corp.*, 320 B.R. 15 (Bankr. M.D. Fla. 2005). Courts often permit debtors to pay prepetition wage claims in Chapter 11 cases. *See, e.g., In re Friedman's Inc.*, Ch. 11 Case No. 05-40129, slip op. at 3 (Bankr. S.D. Ga. Jan. 20, 2005)(Davis, J.); *In re CEI Roofing, Inc.*, 315 B.R. 50 (Bankr. N.D. Tex. 2004). Although there is no clear statutory authority for such payments, a court confident in the debtor's ability to satisfy claims through the third priority can justify these orders under 11 U.S.C. § 105. Collier on Bankruptcy ¶ 507.05[2] (15th ed. rev. Mar. 2005).

Courts that allow early payment of prepetition wages recognize the importance of maintaining a stable, loyal workforce throughout the reorganization. *See, e.g., In re Equalnet Communications Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) ("Employees are more likely to

stay in place and to refrain from actions which could be detrimental to the case and/or estate if their pay and benefits remain intact and uninterrupted.”). Employee stability is vital to a successful reorganization, and without it, the reorganization will likely fail. In re CEI Roofing, 315 B.R. at 61. These same considerations simply do not exist in a Chapter 7 liquidation case.

The primary goal of a Chapter 7 liquidation is to maximize the estate for the benefit of all the creditors and distribute the assets to the creditors in the manner prescribed by the Bankruptcy Code. *See In re Applied Paging Technologies, Inc.*, No. 96-24039, 1999 WL 672098, at * 4 (Bankr. D.N.J. Feb. 3, 1999). It is the “fundamental obligation of a Chapter 7 Trustee and the Court to see to distribution of estate assets according to the statutory priorities.” In re Kids Creek Partners, L.P., 236 B.R. 871, 875 (Bankr. N.D. Ill. 1999).

Although I am sympathetic to the burden this bankruptcy has placed on the employees, the Trustee and the Court must attempt to maximize estate assets for the benefit of all creditors. In order to do so, Trustee needs to be able to litigate the pending matters and investigate and pursue other matters. In these actions, Trustee will incur additional administrative expenses. Due to the limited nature of the estate assets on hand and the potential higher priority liabilities, the Court declines to direct Trustee to pay unpaid prepetition wages at this time. *See Varsity Carpet Services, Inc. v. Richardson (In re Colortex Indus., Inc.)*, 19 F.3d 1371, 1384 (11th Cir. 1994)(“Because the bankruptcy court was aware of significant claims that held a potentially higher priority than those of [Movant], we readily conclude that the bankruptcy court did not abuse its discretion [by denying immediate payment].”).

ORDER

Pursuant to the foregoing, IT IS THE ORDER OF THIS COURT that Debtor’s

Motion to Pay Employee Wages, Vacation Time and Accrued Sick Leave from Estate Assets is
DENIED. The prepetition wages will be paid in the order directed by Sections 726 and 507.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of May, 2005.